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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,068	08/22/2003	Michael L. White	030303	8441

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EXAMINER

LEV, BRUCE ALLEN

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 08/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/646,068

Applicant(s)

WHITE ET AL.

Examiner

Bruce A. Lev

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 August 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 August 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

BRUCE A. LEV
PRIMARY EXAMINER

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 8/22/2003
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-20 are provisionally rejected under the judicially created doctrine of ***double patenting*** over the claims of copending Application No.'s **10/643,177**; **10/646,006**; **10/646,204**; and **10/687,151**. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: A support device having a shaft including threads, hooks, and rings; a support member; and a pusher.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant

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application in the other copending application. See *In re Schneller*, 397

F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "***pusher being tapered***", as in claim 12, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As concerns claim 1, there is a combination/sub-combination issue therefore rendering the claims as vague and indefinite. The subcombination of a "***support device***" is being claimed. However, a "***pusher***" is also being claimed in combination "adapted to *drive the support device*". The applicant needs to make clear as to whether the support device is being claimed alone, or in combination with the pusher, and to write the claim language as such.

As concerns claims 16 and 17, the phrase "the driving device" lacks antecedent basis and therefore renders the claims as vague and indefinite. Furthermore, the "means" clauses are improper, i.e., "extension means" should be "means for extending" or "an extension member"; "support means" should be "means for supporting" or "a support member"; and "retention means" should be "a retention member"

As further concerns claim 16, there is an inconsistency between the language in the preamble and certain portions in the body of the claims, thereby making the scope of the claims unclear. For example, the preamble clearly indicates that the subcombination of a "pusher" is being claimed with the functional recitation of the "pusher" being used "for driving a support device". However, the body of the claim positively recites the "support device", e.g., "the extension means being attached to a shaft of the support device", which

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indicates the claims as being drawn to a combination of the "pusher" and the "support device". Therefore, the applicant is required to clarify what the claims are intended to be drawn to, i.e., either the "pusher" alone or in combination with the "support device", and to present the claims with the language which is consistent with the invention. The applicant should note that "*adapted to be*" language may be appropriate if claiming the "pusher" alone (i.e., "adapted to be secured to").

As concerns claims 18-20, there is a combination/sub-combination issue therefore rendering the claims as vague and indefinite. The subcombination of a "***support device***" is being claimed. However, a "***powder driven tool***" is also being claimed in combination. The applicant needs to make clear as to whether the support device is being claimed alone, or in combination with the pusher, and to write the claim language as such. Furthermore the elements of an invention must be inter-related (connected) via the claim language within the claim, i.e., "the extension pole connected at one end to the support device".

As further concerns claim 18, the use of the phrase "or" in the phrase "at least one or more" is improper. A more appropriate phrase would be "at least one".

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-6, 8, 10-17 are rejected under 35 U.S.C. 102(e) as being anticipated by ***Sprague 2004/0064932***.

Sprague sets forth a support device comprising a shaft 20 having threads at a first end, a support member on a second end having curved, planar, and concave portions, along with a hook portion (inclusive of member 22); a pusher 106 including a driving end and an extension portion, a notch, a receiving means; extension means, support means, retention means, being tapered (in as much as the applicant's is tapered), and made from materials including steel

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7, 9, and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over ***Sprague in view of Malmgren 5,887,677***.

Sprague sets forth the support device, as advanced above, except for the ring portion. However, ***Malmgren teaches*** forming a ring portion 6 upon a like support device. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the support device of Sprague by incorporating a ring portion, as taught by Malmgren, in order to provide means to attach a lifeline or rope thereto, and thereby increase the safety of the support device. The applicant should note that since it appears that ***ONLY*** a "support device" is being claimed in claims 18-20, the ***tool*** is not considered a limitation of the instant claims.

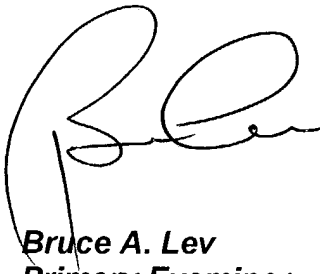
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruce A. Lev whose telephone number is (703) 308-7470.

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Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-2168.

8/4/2004

A handwritten signature in black ink, appearing to read 'Bruce A. Lev', written over a vertical line.

Bruce A. Lev
Primary Examiner
Group 3600